IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.MC.No. 740 of 2004(B)

---

AGAINST THE ORDER DATED 07/08/2003 IN CRMP 3799/03 IN CC.75/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

.....

PETITIONER/ADDL.5TH ACCUSED IN C.C.:

REMANI K.MENON, PUTHUVATTIL HOUSE, ADAKKAPUTHUR P.O., CHERPULASSERY VIA., PALAKKAD.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS/COMPLAINANT/ACCUSED 1 TO 4:

1. FOOD INSPECTOR, CHALAKKUDY CIRCLE, CHALAKKUDY P.O.

2. T.K.PRABHAKARAN, SECRETARY, VARANTHARAPPILLY SERVICE CO-OPERATION BANK LTD. 450, VARANTHARAPPALLY P.O., TRICHUR DIST.

3. M/S. VARANTHARAPPILLY SERVICE CO-OPERATION BANK LTD. 450, REP. BY ITS PRESIDENT, SRI.RAMACHANDRAN.

4. MOHAMMED GAUSE, KODAKARAPARAMBIL HOUSE, KODAKARA P.O. (ZARINA COFFEE, SPICES & TEA TRADERS, KODAKARA).

5. MADHU RAMANKUTTY, S/O.SOORIYAN THARAKAN, PALLIYAL HOUSE, ADAKKAPUTHUR P.O.,CHERPULASSERY (CHAITHANYA OIL MILL, ADAKKAPUTHUR).

6. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 & R6 BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU
R2 BY ADV. SRI.SANTHOSH SUBRAMANIAN
R4 BY ADV.SRI.P.K.RAVISANKAR
R5 BY ADV. SRI.JIJO PAUL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09/08/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

---

Crl.M.C.No. 740 of 2004

---

**ORDER**

Petitioner is the additional fifth accused, who is allowed to be impleaded in C.C.No.75/97on the file of the Judicial First Class Magistrate's Court, Irinjalakuda, registered on the basis of the complaint filed by the first respondent-Food Inspector. The reason for her being impleaded is that vide Annexure A-VII, the third accused, namely the fourth respondent, sought for her impleadment on the ground that she is the licensee of the oil mill, which manufactured the Gingly oil, which is alleged by the first respondent to have been adulterated. There is dispute on the question as to whether on the relevant date, the fourth respondent/third accused was the licensee of the mill. The said dispute cropped up only on evidence being let in by the Food Inspector and Annexures A-V and A-VI were caused to be produced through PW5.

2. On a perusal of Annexures A-V and A-VI, it is seen that the name of the petitioner is recorded as Sl.No.91, as the proprietor of the oil mill. But, that is scored off and as Sl.No.91, name of Madhu Ramankutty, the fifth respondent/fourth accused, is written as the licensee of the oil mill. Strangely enough, again as Sl.No.92, name of the petitioner is written as the licensee of the oil mill. As against entries in Sl.Nos.91 and 92, which contained respectively Annexures A-V and A-VI orders of the executive authority and are referred to as 28/38210 dated 12.9.1996 and 22/38208 dated 22.8.1996. It is submitted by both sides that the orders of the executive authority so made mention of as against Sl.Nos.91 and 92 are not produced.

3. In view of the corrections seen in Annexures A-V and A-VI and the inconsistent change brought about in entries made as Sl.Nos.91 and 92, it has necessarily to be suspected as to whether any such order is there or the register was being tampered

with by somebody else unauthorisedly. The court below has not applied its mind to those aspects and on Annexure A-VII application filed by the fourth respondent/third accused, the court was passing the following order on 7.8.2003:

"Taken up today. Heard and allowed".

Such an impleadment of the petitioner, invoking Section 319 Cr.P.C. or Section 20 of the Prevention of Food Adulteration Act, without the court applying its mind, is not warranted. The impleadment of the additional fifth accused, who is the petitioner in this Crl.M.C., so as to be called upon to answer the charge, is set aside. All the same, for the limited purpose of partaking in an enquiry as to whether who was the licensee as on the relevant date, the petitioner may also partake in the enquiry and unless the court below is satisfied that the licensee is the petitioner as on the date of occurrence, she should not be

impleaded and retained as an accused in C.C.No. 75/97, so as to cast liability on her to answer the charge.

This Crl.M.C. is disposed of with the above directions.

9th August, 2007 (K.P.Balachandran, Judge)

tkv